

## § 1.1561-0

## 26 CFR Ch. I (4-1-10 Edition)

\$220 tax liability there will be no further effect upon the income, earnings and profits, or the basis of stock of any member. If, however, P pays the \$220 tax liability (and such payment is not in fact a loan from P to S1), then P shall be treated as having made a contribution to the capital of S1 in the amount of \$220. On the other hand, if S2 pays the \$220 tax liability (and such payment is not in fact a loan from S2), then S2 shall be treated as having made a distribution with respect to its stock to P in the amount of \$220, and P shall be treated as having made a contribution to the capital of S1 in the amount of \$220.

[T.D. 6962, 33 FR 9655, July 3, 1968, as amended by T.D. 7825, 42 FR 64694, Dec. 28, 1977; T.D. 7728, 45 FR 72650, Nov. 3, 1980; T.D. 8560, 59 FR 41675, Aug. 15, 1994; T.D. 8597, 60 FR 36680, July 18, 1995; T.D. 8677, 61 FR 33325, June 27, 1996]

### CERTAIN CONTROLLED CORPORATIONS

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[T.D. 9476, 74 FR 68532, Dec. 28, 2009]

#### § 1.1561-1 General rules regarding certain tax benefits available to the component members of a controlled group of corporations.

(a) *In general*—(1)—*Limitation*. Part II (section 1561 and following) of subchapter B of chapter 6 of the Internal Revenue Code (Code) (part II) provides rules to limit the amounts of certain specified tax benefit items of component members of a controlled group of corporations for their tax years which include a particular December 31st date, or, in the case of a short taxable year member (see section 1561(b) and § 1.1561-2(e)), the date substituted for that December 31st date. The amount of the tax items enumerated in section 1561(a) available to any of the component members of a controlled group shall be determined for purposes of subtitle A of the Code as if the component members were a single corporation. Certain other tax items also set forth in section 1561(a) (for example, the additional tax imposed by section 11(b)(1) and the section 55(d)(3) phase out of the alternative minimum tax exemption amount) will be determined by combining the positive taxable income or positive alternative minimum taxable income of the component members of such a group and then allocating the amount of such items among those members.

(2) *Definitions*. For certain definitions (including the definition of a *controlled group of corporations* and a *component member*) and special rules for purposes of this part II see section 1563.

(b) *Special rules*—(1) *S Corporation*. For purposes of this part II, the term *corporation* includes a small business corporation (as defined in section 1361). However, for the treatment of such a corporation as an *excluded member* of a controlled group of corporations see § 1.1563-1(b)(2)(ii)(C).

(2) *52-53-week taxable year*. In the case of corporations electing a 52-53-week

taxable year under section 441(f)(1), the provisions of this part II shall be applied in accordance with the special rule of section 441(f)(2)(A). See § 1.441-2.

(c) *Tax avoidance.* The provisions of this part II do not delimit or abrogate any principle of law established by judicial decision, or any existing provisions of the Code, such as sections 269, 482, and 1551, which serve to prevent any avoidance or evasion of income taxes.

(d) *Effective/applicability date.* This section applies to any tax year beginning on or after December 21, 2009. However, taxpayers may apply this section to any Federal income tax return filed on or after December 21, 2009. For tax years beginning before December 21, 2009, see § 1.1561-1T as contained in 26 CFR part 1 in effect on April 1, 2009.

[T.D. 9476, 74 FR 68532, Dec. 28, 2009]

**§ 1.1561-2 Special rules for allocating reductions of certain section 1561(a) tax-benefit items.**

(a) *Additional tax—(1) Calculation—(i) In general.* For the purpose of determining the amount, if any, of the additional tax imposed by section 11(b)(1) (the additional tax), the taxable incomes of all of the component members of a controlled group of corporations shall be combined to determine whether either of the income thresholds for imposing the additional tax have been attained.

(ii) *Special rules.* For purposes of paragraph (a)(1)(i) of this section—

(A) *Component member* means a corporation that is apportioned some part of any applicable tax bracket amount; and

(B) *Taxable income* means the positive taxable income of a component member for its entire tax year (even if it was not a member of the group for each day of that tax year) that includes the same December 31st testing date, which is also applicable to the other component members of that same controlled group.

(2) *Apportionment—(i) General rule.* Any additional tax determined under paragraph (a)(1) of this section shall be apportioned among such members in the same manner as the corresponding tax bracket of section 11(b)(1) is apportioned. For rules to apportion the sec-

tion 11(b)(1) tax brackets among the component members of a controlled group, see § 1.1561-3(b) or (c).

(ii) *Apportionment methods.* Unless the component members of a controlled group elect to use the first-in-first-out (FIFO) method described in paragraph (a)(2)(ii)(B) of this section, such members are required to apportion the amount of the additional tax using the proportionate method described in paragraph (a)(2)(ii)(A) of this section. These component members may elect the FIFO method by specifically adopting such method in their apportionment plan.

(A) *Proportionate method.* Under the proportionate method, the additional tax is allocated to each component member in the same proportion as the portion of the tax-benefit amount that inured to a member from utilizing lower tax brackets bears to the amount of the group's total tax-benefit amount inuring to it from utilizing those lower tax brackets. The tax-benefit amount that inures to a corporation from using a particular tax bracket is the tax savings that such corporation realizes from having a portion of its taxable income taxed at the lower rate attributed to that tax bracket instead of the high tax rates to which it would otherwise be subject. The steps for applying the proportionate method of allocation are as follows:

(1) *Step 1.* The regular tax (not including the additional tax) owed by a component member under a particular tax bracket is divided by the total tax owed by all component members under that tax bracket;

(2) *Step 2.* The percentage calculated under *Step 1* is multiplied by the total tax-benefit amount inuring to all the members of the group from their use of this tax bracket. This computed amount equals the portion of the group's tax-benefit amount that inured to such member from using its portion of this tax bracket;

(3) *Step 3.* The amount determined under *Step 2* is divided by the total tax-benefit amount, inuring to all the component members of the group from using all the tax brackets to which any component member's income was subject;